**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

**Writ petition No.203(S/S)/2003.**

Peter Luis & Others. ... Petitioners.

Versus

State of Uttaranchal, through the Secretary, Medical Health and Family Welfare, Dehradun & others. ... Respondents.

Sri K.N.Joshi Advocate for the petitioner.
Standing counsel for respondent.

**Hon'ble P.C.Pant- J.**

This Writ Petition has been moved under Article 226 of Constitution of India for mandamus directing the respondents to regularize the services of petitioners as Class IV employees.

Brief facts of the case are that the petitioners were enrolled with the District Employment Office, Nainital and they were called for interview through said office to appear before the Selection Committee for job on the daily wage. They were appointed after selection on different dated between 06.10.1981 and 14.07.1989 by issuing appointment letters to them which are annexed as Anenxure-2 to the Writ Petition. The petitioners are continuously working in the Rajya Rakshalaya Sansthan, Patwadangar, District Nainital (for brevity the Institute) which is under the control of Director, Medical, Health and Family Welfare of the State Government. Additional Director of the Institute

who heads it, made several recommendations to the Director, Medical & Health Services for regularization of petitioners as Class IV employees between the year 1992 & 1996. In response to said letter the State Government vide its letter dated 08.05.1998 sought detailed information regarding vacancies etc. On 01.12.1998, 26.02.2000 & again on 06.05.2000 Additional Director of the Institute (respondent No.4) requested for regularization of the petitioners against the vacant Class IV posts. In the Writ Petition it is further alleged that in view of the Government Order dated 17.07.1991 and 26.09.1991, the petitioners are entitled to be regularized against the vacant Class IV posts as they were appointed prior to 29.06.1991. Out of the 10, Five petitioners Employee Provident Fund contribution is being deducted from their wages. In the circumstances, the writ petition was filed and in compliance of the interim order of this court a representation was made by the petitioners, the same was rejected on 25.06.2003. The petitioners have challenged the said order also (Copy Annexure 15-A) by making necessary amendments in the writ petition.

Counter affidavit has been filed on behalf of the respondents in which objection has been raised that the petitioners should have approached the Public Service Tribunal. In the counter affidavit it has been admitted that the petitioners were appointed on daily wages and it has also not been denied that the Additional Director made several recommendations for regularization of the petitioners.

I heard learned counsel for the parties and perused the affidavits and papers on record.

The short question before this court is whether petitioners were wrongly denied the regularization in service as class IV employees.

The order dated 10.07.2003 by which the representation of the petitioners for regularization is rejected is Annexure CA-1 to the counter affidavit. The ground on which the regularization is refused is that in view of Government Order No.831/Personnel-2/2003 dated 16/17th June, 2003 the petitioners are not entitled to the relief. Copy of said Government Order has been annexed as Annexure CA-2 to the Counter affidavit. This Court has gone through this Government Order. In substance, it only says that the persons on daily wages should not be given salary equal to that of the regular employees merely because some persons who have obtained orders from the Courts are being given minimum wages particularly where the posts are not created. If this is only reason of rejection of regularization of the petitioners then the stand taken by the respondents appear to be misconceived. Because in the present case for regularization of petitioners who are 10 in number there are eleven vacancies existing in the Institute as is clear from Annexure-11 to the Writ petition. This annexure is a copy of letter No.G-7-1998-99 dated 01.12.1998 sent by Additional Director of the Institute to the Director, Health & Medical Services. Secondly, the petitioners are working for more than 20 years in the Institute and

Additional Director of the Institute who heads it, himself making time and again recommendations for regularization of the petitioners. In the circumstances of the case the petitioners can not be left for exploitation even after 20 years for a indefinite period. following the principle of Law laid down by the Apex Court in State of U.P. Vs. Putti Lal (1998) 1 U.P. L.B.E.C. 313, the respondents should have been regularized the services of petitioners in view of the eleven vacancies available and the recommendation of the Additional Director of the institute.

For the reasons as discussed above, the Writ Petition is allowed. Respondents are directed to regularize the services of the petitioners forthwith in order of their seniority from the date vacancies in Class IV were available for them. No order as to costs.

Dated : August 7 ,2007 **(P.C. Pant - J)**

S.S.Negi